

Rodney Magallan
USN CDR (SEAL)(ret)

I. Introduction

This report provides my expert opinion on the duties owed by a company who contracts to provide workers to perform sensitive security functions, including intelligence services. I will refer to such a company, like PFC Safeguards, as a contractor, which is an industry term. This opinion is based on years of security/intelligence service in the military, government and in the private sector, and as an embedded security worker and as someone who has supervised such embedded employees provided by a contractor. This opinion will address what constitutes an embedded employee, why a company would use an embedded employee and where the employee – employer relationship resides in the industry in terms of supervision and control of the employee, and the standard of care for supervision that applies to the contractor that places the embedded employee. As it relates to Veronica Zea, it is my opinion that responsibility for supervision and control rested with eBay because it was with eBay that Ms. Zea had the, in fact, employee-employer relationship – not with the contractor, PFC. It is further my opinion that PFC did not breach any duties in its role as contractor. Finally, it is also my opinion that the harassment campaign of the Steiners in which Ms. Zea was involved along with others at eBay, under the direction of her eBay supervisors, was not within the scope of her employment by PFC and such conduct was not reasonably foreseeable to a company in the position of PFC.

II. Qualifications

My experience, education and qualifications are provided in the attached resume.

III. Materials reviewed

A list of the materials that I have reviewed is attached.

IV. Overview and Background of Claims

Veronica Zea worked at eBay from 2017 through 2019. From 2017 until the end of 2018, she was employed by a contractor, Concentric Advisors, but it was only the need of eBay for her as a worker that resulted in her being hired.

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(Stephanie Stockwell also was employed by Concentric, and then PFC, but was hired by eBay.) A company such as eBay uses contractors to supply embedded employees because it allows them to scale capabilities quickly and for when the company doesn't have established organizational positions. When hired, she was for all practical purposes, interviewed and hired by eBay to be part of its embedded workforce, with Concentric providing administrative functions associated with the employment such as processing payroll, handling PTO, withholdings, insurance and other benefits. Ms. Zea's title, salary, benefits and job duties were all dictated by eBay upon hiring. Ms. Zea's promotions, title changes, changes in duties and increases in pay were all dictated by eBay, including her change in classification from being an hourly employee to salaried.

When eBay terminated its contract with Concentric, it entered into a Master Services Agreement with a new contractor, PFC, which had already been providing other security workforce members, but not intelligence personnel. Under the MSA, PFC took over the personnel and the administrative functions that had been handled by Concentric for the workers already embedded in the GIS. As was the case with Concentric, all supervision, direction and control of Ms. Zea rested with eBay while Ms. Zea was an employee of PFC.

The harassment campaign against the Steiners is materially undisputed given the well-documented extensive criminal investigation and admissions made by the participants. As such, the details will not be repeated here. PFC management had no knowledge of the harassment campaign. It had no knowledge that the Steiners even existed until the harassment campaign came to light.

In the Amended Complaint, the Steiners have made claims against PFC for Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, Negligence, Violation of Civil Rights, Defamation and False Imprisonment alleging that PFC is liable for Ms. Zea's actions as her employer. The Steiners have also brought direct claims against PFC for negligent supervision and negligent retention. They have also brought a conspiracy claim

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against PFC which appears to be partially based on Ms. Zea's actions and partly based on allegations directly against PFC.

V. Opinions

I have been asked to review the facts of this case and provide opinions on the subject matter pertaining to Plaintiffs' claims against PFC as set forth in the Amended Complaint. My opinions are based on my education, training, and experience. My opinion is that PFC did not breach the standard of care for supervision or retention that applies to a contractor who provides to a client an embedded intelligence analyst like Ms. Zea under the facts of this case. It would have been inappropriate for PFC to seek to have Ms. Zea report her activities to PFC, or for PFC to control, direct or supervise Ms. Zea given her job duties. There were no complaints by Ms. Zea's eBay supervisors about her prior to the Natick events – in fact, she consistently received promotions and salary increases. There were no flagrant red flags known to PFC that would have put them on notice to conduct a further inquiry into Ms. Zea's performance. In fact, extensive steps were taken before, during and after the harassment campaign to conceal information from PFC. The undisputed evidence is that PFC management had no knowledge of the Steiners, or that the Steiners were even POI to eBay. In reaching this opinion, I have considered several factors that I deem relevant based on my experience and training.

Factor #1. eBay controlled when, where, and how the individual performs the job: The testimony of Ms. Zea and others demonstrates that every aspect of her work at eBay was directed, controlled and supervised by eBay. eBay supervisors dictated whether she was paid as an hourly employee or salaried. They dictated the days, hours and duration of her work. PFC had no discretion over when and how long Veronica Zea would work. Jim Baugh had authority to direct Zea to work 10-12 hour workdays and to be on call on weekends. PFC had no authority over these decisions.

Factor #2. The nature of Zea's position required strict confidentiality and an environment of collaboration. All security positions require some level of confidentiality and collaboration. But, certain positions require the highest level of confidentiality and mandate that information be very compartmentalized. Security/intelligence workers who are involved in

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executive protection, threat assessment and duties like those performed by Ms. Zea would not be expected to share information about their work with the contractor. To improve its function and teamwork, eBay would want to treat its GIS embedded workforce no differently than eBay employees. Functionality can be undermined if some team members feel as though they are an outsider. This makes the contractor's ability to supervise, direct or control impossible and is counterproductive to the security goals of the team.

Factor #3. Zea received all of her training from eBay. Zea was a recent college graduate with no prior professional work experience or any experience in security operations. The training that she received in order to perform her job when she began, and on an ongoing basis, was from her eBay team, with a couple of nominal exceptions. This is different than guard force positions where the contractor provides expensive training of hard skills before placement, such as a security guard or ERT member who will be trained by the contractor in weapons use, emergency response, following post orders, first aid and trauma medicine, de-escalation skills, defensive tactics, room clearing, patrolling, vehicle search, coordination with local police, etc. Companies also use contractors for guard force positions so as not to create the perception of building a mini-army. For the guard force, the contractor is also in a better position to provide required certifications/requalifications, such as in weapon use. eBay also paid for outside training of Ms. Zea and other embedded members of the intelligence workforce.

Factor #4. eBay provided Zea the instrumentalities and tools for her position. Under SOW 3, eBay provided Ms. Zea with all equipment required for her to provide professional services which included computers, work phone, desk, and office. This is not necessarily industry standard as eBay could have required that PFC supply these tools with an upcharge. This demonstrates eBay's interest in control of Ms. Zea's work and keeping knowledge of her work from PFC. For instance, if Ms. Zea was terminated, PFC could potentially have access to the laptop, cell phone, etc. The fact that PFC did not supply tools also demonstrates that Ms. Zea's employment was based on eBay requiring her services; there existed no plan for her to move into PFC's intelligence center or to another client. The one tool that PFC provided, as a requirement of eBay under SOW 3, was an American Express credit card, the use of which required eBay approval and which chargers were ultimately paid

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by eBay, with a 5% mark-up. The standard industry mark-up is 5% to 10%. The purpose of the mark-up is due to the administrative burden on PFC and the fact that they are fronting the expenses to Ms. Zea or the credit card bank prior to reimbursement by eBay. PFC complied with the MSA and industry practice by requiring that Ms. Zea's expenses (and those of others in the workforce) be approved by eBay supervisors and documented. Given Zea's duties and limited travel, I do not see the credit card as a material tool required to perform her duties as compared to the other tools she was provided by eBay. She also used a personal credit card for which she was reimbursed.

Factor #5. Zea worked exclusively at eBay's locations. Ms. Zea did not work at any PFC location; she worked exclusively at the eBay campus in California, occasionally in Austin, or traveled with eBay leadership as directed by her eBay supervisors. PFC is located in Las Vegas, NV. She never worked from a PFC location, and did not even visit its headquarters when in Las Vegas for eBay business. Further, Zea worked in close physical proximity to her eBay supervisors including Jim Baugh the Sr. Director of Global Security for eBay, and Stephanie Popp, in a very restricted area with tight access control that very few people had access to. Even Mr. Pugh did not have access to that space without an escort, according to Ms. Zea.

Factor #6. Zea was never truly hired by PFC. Ms. Zea's services to eBay were transferred from Concentric Advisors to PFC. eBay hired Ms. Zea and supervised her work, trained her and promoted her for some portion of two years before PFC took over the role of contractor from Concentric at eBay's request. PFC conducted an administrative on-boarding of Ms. Zea (and Stockwell), not a hiring.

Factor #7. The contractor, PFC, did not have the right to assign additional projects to Zea. PFC had no right to assign additional projects to Ms. Zea and did not assign her work outside of eBay. Her duties were 100% dictated by eBay.

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Factor #8. eBay made all compensation decisions. Regarding Ms. Zea's compensation and benefits, PFC was directed by eBay as to how, the amount, and frequency. eBay had the authority to change Ms. Zea from being an hourly employee to salaried. eBay conducted performance evaluations. eBay made decisions regarding promotions. Ms. Zea knew that Mr. Baugh had the power to terminate her or promote her or make her a direct eBay employee, like Stockwell), entitled to eBay's employee benefits and employment stability. PFC merely served in an administrative capacity in implementing eBay's decisions.

Factor #9. Zea's role in hiring. In the Spring of 2019, Zea was tasked by her eBay supervisor to participate in recruiting and interviewing additional workers. She specifically recommended excluding PFC from this activity. Zea did not view PFC as being in her chain of command. She also was involved in hiring and training new employees for eBay's Austin GSOC.

Factor #10. Embedded workers became full time eBay employees. Given my experience in the security industry, being a direct employee always has advantages over being an embedded worker in terms of compensation, job security and growth opportunities. I believe that becoming an eBay employee was the goal of each embedded worker, and that is why the embedded workers put up with the working conditions and did not complain. Stephanie Popp (2017) and Stephanie Stockwell (2019) were part of the embedded eBay workforce in the GIS and became direct eBay employees. And, in the case of Ms. Stockwell, despite the change in the company name on her paycheck, everything about her position, duties and supervision remained the same.

Factor #11. The MSA dictated who controlled Protective Services, but it is silent as to Professional Services. It is typical for the contractor to control the operation of some security services that involve hard skills. These are referred to as "Protective Services" in the MSA and SOW 1 and SOW2. The language of the MSA dictating that supervision of Protective Services rests with the contractor is typical for those types of services (security guards, ERT members, etc.). It is the opposite for intelligence positions, described in SOW 3 as "Professional Services." In my opinion, the work of the GIS intelligence analysts, such as Ms. Zea, were "Professional Services" and were subject to the supervision and direct control of eBay. Even if one were to apply the MSA language regarding "Protective Services" to "Professional Services", eBay

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acknowledged and agreed that eBay's preferences regarding control were to be followed. The supervisors of the embedded workforce in Global Security made clear, in words and practice, that the embedded workforce was not to report to or receive direction from Concentric or PFC and that occurred here. It is standard in the industry for sensitive intelligence operations where knowledge is on a "need to know" basis, for the contractor not to have a role in controlling those services.

Applying these factors, it is my professional opinion that Veronica Zea was an embedded employee working for eBay in the Global Intelligence Center reporting directly to and taking directions from eBay management. She was for all intents and purposes an employee of eBay while PFC merely handled administrative HR-type functions, but properly played no role in supervising or evaluating her work, assigning her duties or directing her activities. I conclude that PFC did not breach the standard of care in not exercising supervision or control over Ms. Zea or for retaining her as an employee absent a decision to terminate being made by eBay.

I am aware that the direct claim against PFC largely relates to Ms. Zea's use of her PFC credit card for expensive meals and a team gathering at a strip club in Las Vegas at the conclusion of arduous security work at the eBay open in Las Vegas, but there is a dispute as to whether PFC was aware of those charges before the harassment campaign occurred. Even assuming that these charges were known to PFC prior to the harassment campaign, it is my opinion that it had no duty to take action or make inquiry absent a concern or complaint being reported by Ms. Zea's eBay supervisors, eBay's finance department, or Ms. Zea. Again, all supervision and control of Ms. Zea's work was by her eBay supervisors. Specifically, the responsibility for approving expenses rested with eBay under the MSA and in practice. It was to eBay's benefit to scrutinize and reject expenses for which it would not need to make payment plus 5%. eBay had at least two opportunities to challenge expenses. PFC was, in effect, acting as a bank. Upon expense approval, PFC's responsibility was administrative: (a) to make reimbursement to Ms. Zea and/or payment of the PFC credit card, as applicable; and (b) to include the expense on PFC's invoice to eBay with appropriate documentation and incorporating the agreed upon service fee (which is also a standard practice in the industry). Even if it is argued that seeing these charges should have raised a red flag, it certainly would not be a

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matter requiring urgent attention, but a topic reasonably left for the next scheduled check-in to discuss operations of the guard force and client satisfaction of professional services. Questions as to whether an expense is appropriate, reasonable or necessary for the scope of work, or properly charged to a client versus being absorbed by the contractor are commonplace issues in military, government and private sector security work. There was no notice to PFC management prior to the harassment campaign that the PFC card was being by Ms. Zea for criminal conduct. There is no evidence that any expense incurred by Ms. Zea prior to the harassment campaign was questioned by eBay either before submission to PFC or when invoiced back to eBay. The claim that PFC somehow, without any knowledge or reason to make inquiry, financed the crimes that occurred here is tantamount to arguing that a bank finances criminal conduct when a customer uses the issued card for an unlawful purpose and the bank is not aware of the unlawful purpose. In this case, the time frame between the expenses being incurred in Las Vegas and the start of the harassment campaign was very brief. The system of scrutiny between eBay and PFC is consistent with the industry.

All of the opinions expressed herein are based on my education, experience, training and review of the material provided. All of these opinions are given with a reasonable degree of certainty and based on the information received and reviewed to date. Should other records or information become available, I would review and provide an amended or supplemental report if necessary.

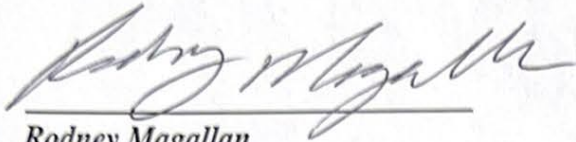
VI. Compensation

I am being compensated at the hourly Rate: \$300 for expert services. For testimony, my daily charge is \$2,400. I will also be reimbursed reasonable and necessary expenses at cost.

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VII. Publications and Prior Testimony

In the last 10 years, I have authored a book entitled, The Tip of the Spear, Its Not What You Think. I have not testified as an expert at trial or deposition previously.

A handwritten signature in dark ink, appearing to read "Rodney Magallan", written over a horizontal line.

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Materials Reviewed

Answers to Interrogatories:

1. Devin Wenig's answers to Plaintiff's Interrogatories
2. eBay's answers to Plaintiff's Interrogatories
3. eBay's answers to Steve Wymer's Interrogatories
4. eBay's answers to Wendy Jones's Interrogatories
5. Brian Gilbert's answers to Plaintiff's Interrogatories
6. Brian Gilbert's answers to eBay's Interrogatories
7. Brian Gilbert's answers to Wendy Jones's Interrogatories
8. Brian Gilbert's answers to Steve Wymer's Interrogatories
9. David Harville's answers to eBay's Interrogatories
10. David Harville's answers to Wendy Jones's Interrogatories
11. David Harville's answers to Plaintiff's Interrogatories
12. David Harville's answers to Steve Wymer's Interrogatories
13. Phillip Cooke's answers to Plaintiff's Interrogatories
14. Phillip Cooke's answers to eBay's interrogatories
15. Phillip Cooke's answers to Wendy Jones's Interrogatories
16. Phillip Cooke's answers to Steve Wymer's Interrogatories

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17. PFC's answers to eBay's Interrogatories
18. PFC's answers to Plaintiff's Interrogatories
19. Stephanie Popp's answers to Wendy Jones's Interrogatories
20. Stephanie Popp's answers to Plaintiff's Interrogatories
21. Stephanie Popp's answers to eBay's Interrogatories
22. Stephanie Popp's answers to Steve Wymer's interrogatories.
23. Plaintiff's answers to PFC's Interrogatories
24. Steiner Associates answers to Defendant's interrogatories
25. David Steiner's answers to Defendant's interrogatories
26. Ina Steiner's answers to Defendant's Interrogatories
27. Steiner Associates Supplemental Answers
28. David Steiner Supplemental Answers
29. Ina Steiner Supplemental Answers

Criminal cases:

1. 1.Baugh- Judgment in criminal case
2. Baugh- sentencing Memorandum by Jim Baugh
3. Baugh- Sentencing Memorandum by USA
4. Baugh- Plea Colloquy
5. Baugh- Sentencing Transcript
6. Gilbert- Plea Agreement
7. Gilbert- Plea Change

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8. eBay- Plea Agreement
9. Harville- Plea Agreement
10. Harville- Sentencing Transcript
11. Popp- Judges Findings
12. Popp- Plea agreement
13. Popp- Plea Change
14. Popp- Sentencing transcript
15. Popp- Sentencing Memorandum by USA
16. Stockwell- Plea Change
17. Stockwell- Sentencing memorandum by Stephanie Stockwell
18. Stockwell- Sentencing memorandum by USA
19. Stockwell- Sentencing Transcript
20. Zea- Declaration of Frank Ubhaus in support of Zea memorandum
21. Zea- plea agreement
22. Zea- Plea Colloquy
23. Zea- Sentencing Letter
24. Zea- Sentencing memorandum by USA
25. Zea- Sentencing memorandum by ZEA
26. Zea- Sentencing transcript
27. Zea- Supplement to Sentencing Memorandum
28. Olausson Letter to Judge Young

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Depositions:

1. Dan Cory
2. Veronica Zea
3. PFC (Krystek and Sheperd)
4. eBay (Anagha Apte)
5. Anneli Olausson
6. Stephanie Stockwell

Emails:

1. Zea's Annual Performance Review for eBay while we worked for Concentric
2. FW Global Resiliency Standards
3. FW New Candidate Veronica Zea
4. GIC Recruiting
5. GSR 2019 Annual Compliance Training Project
6. GSR Standards- final review
7. PSOC Course
8. Re Veronica Zea (Termination)
9. Re New candidate- Veronica Zea- confirmed
10. Re Welcome
11. Ronnie Meeting

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Other Materials:

1. Amended Complaint
2. Ebay 30(b)(6) Deposition Notice to PFC
3. Full Master of Services Agreement
4. Zea Termination letter

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561 Cortona Lane • Georgetown, TX 78628 • Phone: (361) 445-9438 • E-Mail: veromaga@msn.com

Experience

Retired SEAL Commander USN / Author / Consultant 01SEP2021 – Present

Retired from Naval service after 35 ½ years (9 of which with Naval reserves). I consulted three companies on leadership. I authored *Tip of the Spear it's not what you think*.

Naval Special Warfare Group ELEVEN Jul 2020 – 01SEP2021

Operations Officer for Naval Special Warfare Reserve Component of over 900 Sailors responsible for Manning, Training and equipping at the Operational level of War.

Naval Operational Support Center Austin TX Jul 2018 – Jul 2020

Commanding Officer of NOSC Austin in charge of manning, training, equipping, global deploying and re-deploying of over 300 Sailors. The mission of the Navy Reserve is to deliver strategic depth and operational capability to the Navy, Marine Corps, and Joint Forces.

SEAL Team EIGHTEEN Jul 2016 – Jul 2018

Executive Officer (second in command) responsible for the manning, training, equipping, global deploying and re-deploying of over 500 (96 SEAL's and 400+ combat support) Naval Special Warfare reservists.

Naval Operational Support Center Peoria IL Aug 2014 – Jul 2016

Commanding Officer of NOSC Peoria in charge of manning, training, equipping, global deploying and re-deploying of over 100 Sailors. The mission of the Navy Reserve is to deliver strategic depth and operational capability to the Navy, Marine Corps, and Joint Forces.

Special Operations Command Europe Plans/Partner engagement/J3X Aug 2012 – Aug 2014

Plans and Partner Nation engagement focusing on the European challenges against State and non-State actors. Assessments of U.S. and Partner Nation capabilities and where we can bring and or help develop capacities in the future. Operational Intelligence.

SEAL Team SEVENTEEN Feb 2011 – Aug 2013

Operations Officer charged with the manning, training, equipping, global deploying and re-deploying of over 300 (96 SEAL's and 200+ combat support) Naval Special Warfare reservists.

Naval Special Warfare Support Activity One Sep 2009 – Feb 2011

Cross Functional Team Officer in Charge/Platoon leader responsible for the preparation, successful combat deployment and re-deployment of a Cross Functional team.

Concentric Solution International Oct 2007 – Sep 2009

Executive Protection Specialist assigned to the Watermark protective detail.



Naval Special Warfare Group One Jan 2007 – Oct 2007

Task Unit Commander Naval Special Warfare Manda Bay Kenya responsible for a 100 man forward operating base. Responsibilities included overall base and personnel health and security to include potable drinking water; shelter, food and training with our host nation.

Wal-Mart Stores Incorporated Jul 2005 – Jan 2007

Executive Protection Manager for tier one executives of Wal-Mart Stores Incorporated to include trip planning, venue security, and personal protection. The focus of my efforts where international travel with some services provided in the United States.

Central Intelligence Agency Jun 2002 – Jul 2005

Protective Agent / Global Response Staff responsible for the safety of Agency personnel in high threat areas abroad and Secret Service type protection for the Director and Deputy Director of the CIA. Lead instructor of the Protective Agents Course for three classes.

United States Marshal Service Feb 2001 – Jun 2002

Deputy United States Marshal assigned to the Southern District of Texas.

United States Navy Jul 1986 – April 2000

United States Navy SEAL BUD/S class 143. Assigned to SEAL Team Four (platoon member)(1987-1991), Army Special Forces Medical Sargent's Course 18D (student)(1992-1993), Naval Special Warfare Development Group (Boat crew captain / leading Petty Officer)(1993-1997), Special Boat Unit 20 (Medical Depart leading Petty Officer)(1997-2000).

Education

Bachelors of Science in Liberal Arts from Regents College

Rapid Response to Active Shooter Instructor Training

CIA Certified level II Instructor

Pressure Point Control Techniques (PPCT) Defensive Tactics Instructor Certification

CIA Protective Agents Course

Federal Law Enforcement Training Center Vehicle Ambush Countermeasures Training Program

Federal Law Enforcement Training Center Firearms Instructor (Distinguished Weapons Expert)

International Training Incorporated Motorcade Operations Driving Course

International Training Incorporated Off-road Driving Course

Close Quarters Defense Protective Specialist Course

Deputy United States Marshal Academy



Skills

United States Navy SEAL (16 years Enlisted – 14 active duty 2 reserves)(19 years Commissioned – 7 years reserves 12 years active duty) retired at the rank of Navy Commander

Level II Spanish speaker

Apprentice instructor Trident Martial Arts Academy (Sifu Pat Tray)

Travel

Kenya, Djibouti, Colombia, Ecuador, Venezuela, Suriname, French Guiana, Peru, Brazil, Bolivia, Chile, Paraguay, Uruguay, Argentina, Trinidad and Tobago, Haiti, Puerto Rico, The Bahamas, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, South Korea, China, Philippines, Guam, Afghanistan, Iraq, Uzbekistan, Jordan, Israel, Palestinian territories, Kuwait, Bahrain, Mexico, Lithuania, Slovenia, Poland, Germany, France, Spain, Italy, U.K., Ireland and Canada.